

# BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of.	)	
	)	No. O-00-104
Opinion requested by	)	July 7, 2000
Hilda L. Solis,	)	
State Senator, 24 <sup>th</sup> District	)	
	)	
	)	

BY THE COMMISSION: State Senator Hilda L. Solis has requested an opinion of the Fair Political Practices Commission on the following question.

## I. Question

Under the gift limits of the Political Reform Act ("Act"),<sup>1</sup> may Senator Solis accept a silver lantern from the John F. Kennedy Library Foundation as part of its Profile in Courage Award?

## II. Conclusion

Under the Act's gift limits, Senator Solis may accept the silver lantern from the John F. Kennedy Library Foundation. Senator Solis won the lantern in a bona fide nationwide competition among statesmen and its acceptance presents no possibility of influence or bias.

## III. Facts

Senator Solis has been named the 11<sup>th</sup> recipient of the Profile in Courage Award, given annually by the John F. Kennedy Library Foundation, a nonprofit organization located in Massachusetts. The award consists of a \$25,000 stipend and a silver lantern, representing a beacon of hope. The silver lantern, the symbol of the award, is designed by Edwin Schlossberg, crafted by Tiffany's, and worth from \$8,000-\$10,000. The award ceremony took place on May 22, 2000.

Senator Solis did not accept the \$25,000 stipend. She directed that the monetary portion of the award be donated to three charities. She is requesting permission to keep the silver lantern, which is the symbol of the award.

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<sup>1</sup> Government Code sections 81000 - 91015. All section citations are to the Government Code, unless otherwise noted.

The John F Kennedy Profile in Courage Award is presented each year to a current or former government official who has withstood strong opposition from constituents, interest groups or adversaries to follow what he or she believes is the right course of action. The award was created by the Kennedy Library Foundation in 1989. The Kennedy Library Foundation is a nonprofit organization that seeks to promote understanding of American politics, history, and culture, the process of governing and the importance of public service. The Kennedy Library Foundation does not attempt to influence legislation in California, nor is it affiliated with an organization that does so.

Past recipients of the Profile in Courage Award include former Governor of Connecticut Lowell Weicker; former Governor of New Jersey James Florio; U.S. Congressman Henry Gonzalez of Texas, former U.S. Congressman Michael Synar of Oklahoma; former U.S. Senator George Mitchell; and 1999 co-recipients U.S. Senators John McCain of Arizona and Russell Feingold of Wisconsin.

Senator Hilda Solis was selected to receive the 11<sup>th</sup> Profile in Courage Award for her legislative work on environmental justice. Senator Solis sought to counter what she believed to be a disproportionate number of waste sites and polluting factories located in poor neighborhoods, many with large numbers of Latinos or African Americans. Senator Solis' environmental justice legislation, the first of its kind, won passage and was signed into law by Governor Gray Davis in October 1999.

Senator Solis was selected to be the recipient of the Profile in Courage Award by a nine-member committee whose members are: John Siegenthaler, David Burke, Marian Wright Edelman, Antonia Hernandez, Edward M. Kennedy, Caroline Kennedy, David McCullough, Alan Simpson, and Olympia Snowe.

#### **IV. Analysis**

##### **A. Commission's Authority to Interpret the Act**

The Commission has "primary responsibility for the impartial, effective administration and implementation" of the Act. (Section 83111 ) The Commission's authority to interpret the Act includes the express power to "adopt, amend and rescind rules and regulations to carry out the purposes and provisions" of the Act, provided such regulations are consistent with the Act and other applicable law, and to issue opinions to requestors about their duties under the Act. (Sections 83112 and 83114 )

In interpreting the Act, the Commission looks to the plain meaning of the statute and its legislative history, applying reason and common sense to interpret the statute consistent with its

purposes. (See, e g , *Halbert's Lumber, Inc. v Lucky Stores, Inc* , 6 Cal App.4th 1233, 1238-1239 (1992) ) The Commission's authority to implement the purposes of the Act, and not just its literal meaning, through regulations has been upheld in *Californians for Political Reform v Fair Political Practices Commission*, 61 Cal.App 4th 472 (1998) (upheld administrative overhead exception to regulatory definition of "contribution"); *Watson v Fair Political Practices Commission*, 217 Cal App.3d 1059 (1990) (upheld regulation 18901 interpreting section 89001's statutory prohibition on newsletters and other mass mailings); and *Consumers Union v California Milk Producers Advisory Bd* , 82 Cal.App.3d 433 (1978) (upheld regulation 18707.4 [then 18703] creating a narrow exception from disqualification for members of boards or commissions, who by law, are required to come from the industry that the board or commission regulates).

In these cases, the courts have given deference to the Commission's administrative interpretation of the Act. In *Californians for Political Reform, supra*, the court stated that "because of the agency's expertise, its view of a statute or regulation it enforces is entitled to great weight unless clearly erroneous or unauthorized." (*Id.* at 484.) Petitioner therein challenged an exception to the regulatory definition of "contribution" for administrative overhead that was adopted by the Commission in the wake of passage of Proposition 208. The emergency regulation, 18215(c)(16), added the sixteenth exception to the definition of contribution. In upholding the regulation, the court observed that the Commission had adopted, and "over the years amended many times, a regulation that expressly includes some types of payments as contributions but excludes others." (*Id.* at 481 )

Another major case considering the FPPC's authority to interpret the Act, *Watson v Fair Political Practices Commission, supra*, involved the mass mailing prohibition. In 1989, Proposition 73 amended Section 89001 to read. "No newsletter or other mass mailing shall be sent at public expense." Interpreted literally, this statute would have imposed a blanket prohibition on all mass mailings sent by government, including such things as tax-return booklets, ballot pamphlets, public meeting agendas and the like.

The FPPC interpreted the twelve-word statute with a 1,556 word regulation — regulation 18901 In addition to challenging the constitutionality of the ban on mass mailings, plaintiffs in *Watson* argued that the FPPC, in promulgating regulation 18901, "had impermissibly rewritten section 89001 by creating numerous exceptions and exclusions not authorized by the clear wording of the statute " (*Id.* at 1068 ) The court disagreed and upheld the regulation.

"Contrary to the argument advanced by plaintiffs, the FPPC has not rewritten section 89001, but has merely interpreted it in a manner consistent with the intent of the electorate in adopting Proposition 73

We agree with the FPPC that the effect of regulation 18901 is to permit the free flow of necessary government information while reducing the political benefit realized by incumbent elected officials from the sending of newsletters and other such mass mailings. This is totally consistent with the FPPC's duty to implement the intent and not the literal language of the statute." (*Id.* at 1076.)

Thus, the Commission's authority to implement the intent of the Act, and not just the strict letter of the statute, is well established.

### **B. Exceptions to and Interpretation of the Gift Statutes**

Though the Act's gift limitations are broad, they have been the subject of numerous statutory exceptions and frequent Commission interpretation through regulations and opinions.

Section 82028 exempts the following from the definition of "gift": informational material; returned gifts and gifts donated to charity; gifts from an individual's family; campaign contributions; a devise or inheritance; and personalized plaques and trophies with an individual value of less than \$250. (Sections 82028(b)(1)-(6); regulations 18942.1 and 18943.) In addition, section 89503, which imposes the \$300 gift limit on elected officials, states that certain travel payments permitted by the Act under section 89506, and wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, are not prohibited or limited. (Section 89503(e)(1)-(2) )

Regulation 18942, "Exceptions to Gift and Exceptions to Gift Limits," restates the statutory exceptions to the gift limit and adds other exceptions for home hospitality, catastrophic leave donations, disaster relief payments, and intrastate transportation, food, lodging and nominal benefits when an official travels to make a speech. Other regulations create exceptions to the gift statutes for gifts to an agency, tickets to nonprofit organizations' fundraisers and political fundraisers, and prizes and awards from bona fide competitions. (Regulations 18944.2, 18946 4, and 18946.5.)

The Commission has issued fourteen opinions construing section 82028, most of which address whether a particular item is or is not a gift under the Act, or the valuation of gifts.<sup>2</sup> Many of these early Commission opinions on gifts were subsequently codified as regulations.

In interpreting the gift statutes, the Commission consistently has determined and implemented the purposes of the Act, not just its literal meaning. These regulations and opinions apply the Act's gift limits in a practical, common sense manner, that is wholly consistent with the purposes of the Act.

### C. Application of Law to Facts

Section 82028(a) defines a "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." Section 82028(b)(6) exempts from the definition of "gift" personalized plaques and trophies with a value of less than \$250.

The gift limit for state legislators is set forth in section 89503(a):

"(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [three hundred dollars (\$300)]."<sup>3</sup>

Regulation 18946 5 contains an exception to the restrictions on gifts for a prize or award received by an official in a bona fide competition. The regulation states:

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<sup>2</sup> *In re Hopkins* (1977) 3 FPPC Ops 107 (free passes to Disneyland), *In re Stone* (1977) 3 FPPC Ops 52 (gifts to an agency), *In re Gutierrez* (1977) 3 FPPC Ops 44 (valuation of reception), *In re Thomas* (1977) 3 FPPC Ops 30 (parking pass), *In re Nida* (1977) 3 FPPC Ops 1 (publications and maps given to legislators), *In re Torres* (1976) 2 FPPC Ops 31 (wedding gifts), *In re Brown* (1975) 1 FPPC Ops 67 (campaign transportation), *In re Hayes* (1975) 1 FPPC Ops 210 (proceeds from fundraising dinners), *In re Russel* (1975) 1 FPPC Ops 191 (state rate offered by hotel), *In re Cory* (1975) 1 FPPC Ops 153 (valuation of unique gifts, volunteer assistance from a neighbor), *In re Cory* (1975) 1 FPPC Ops 137 (attending a political fundraising dinner), *In re Cory* (1976) 2 FPPC Ops 48 (gifts received by spouse), *In re Spellman* (1975) 1 FPPC Ops 16 (tour of a nuclear power plant), *In re Lunardi* (1975) 1 FPPC Ops 97 (golf tournament held by a lobbyist)

<sup>3</sup> The gift limit is adjusted every two years to reflect changes in the Consumer Price Index and is now \$300 (Section 89503(f) and regulation 18940 2 )

“A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an *official or candidate*. A prize or award which is not reported as a gift shall be reported as income.” (Emphasis added )

The Act's definitions of “official” and “candidate” are limited to California state and local officials and candidates. Section 82048 defines a “public official” as “every member, officer, employee or consultant of a state or local government agency ....” Similarly, the definition of the term “candidate” in sections 82007 and 89503(b)(1) is limited to individuals running for elective office in the state of California. Under Section 82023, “elective office” means “any state, regional, county, municipal, district or judicial office which is filled at an election.” The Act's definition of “candidate” does not include individuals running for federal office, or running for office in other states.

Regulation 18946.5 most frequently applies to allow public officials to keep prizes won in raffles, drawings, lotteries, or other contests open to the public or a wide field of contestants. The regulation in the past, however, has been applied to permit an elected official to keep a public service award and cash prize, where the competition was bona fide and the group of contestants was not exclusively made up of California public officials. The *Pritchard* Advice Letter, No A-95-094, applied regulation 18946 5 to permit Assembly member Jackie Speier to receive KGO-TV's “Woman of the Year” award and a cash prize, because, despite the fact that Assembly member Jackie Speier was a California elected official, the TV station's pool of contestants was not limited to public officials, but was comprised of women from many fields, including medicine, sports, social work, and journalism. Moreover, the winner was picked by an independent panel of judges, not the television station, which fact contributed to the bona fide nature of the contest.

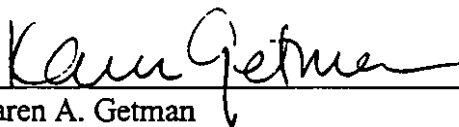
Similarly here, competition for the Profile in Courage Award is not limited to California public officials or candidates. The pool of contestants for the Profile in Courage Award is nationwide and includes current or former elected officials, government employees, judges and attorneys. In addition, competition for this prestigious public service award is bona fide. Each year several dozen candidates are considered and extensive briefing materials are prepared on each. The winner is selected by the nine-member award committee. Senator Solis received the lantern in a bona fide competition that was not based on her status as a California official.

Further, permitting Senator Solis to retain the silver lantern is consistent with the purpose of the gift limits. As articulated in Sec. 5, Art. IV of the State Constitution, amended by Proposition 112, the broader purpose of the gift limits is to "ban or strictly limit the acceptance of a gift by a Member of the Legislature from any source *if the acceptance of the gift might create a conflict of interest*" (Emphasis added ) Legislators are prohibited from accepting gifts out of concern that such gifts might unduly influence or create a conflict of interest for the official. This is the principle underlying the statutory gift limits.

In this case, Senator Solis' acceptance of the Profile in Courage lantern does not raise any possibility of bias or give rise to a potential conflict for her. In fact, Senator Solis earned the Profile in Courage Award for working on legislation in the face of special interest opposition. The donor of the award, the Kennedy Library Foundation, is a nonprofit organization that does not lobby in California and is not affiliated with any organization that does so. The Foundation is not a potential source of a conflict of interest for Senator Solis, nor is she in a position to grant any assistance or favors to the Foundation.

We find that Senator Solis may accept the silver lantern from the John F. Kennedy Library Foundation because the lantern is an award Senator Solis won in a bona fide nationwide competition among statesmen, and because permitting her to retain the lantern from the nonprofit foundation in these circumstances admits no conceivable possibility of influence or bias and is therefore in accord with the purposes of the gift statutes.

Adopted by the Commission on July 7, 2000. Concurring: Commissioners Deaver, Getman, Scott, and Swanson. Dissenting: Commissioner Makel.

  
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Karen A. Getman  
Chairman